

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CHAPTER 11
	:	
DN REAL ESTATE SERVICES	:	CASE NO. 17-55587 - PMB
& ACQUISITIONS, LLC,	:	
	:	
DEBTOR.	:	

DANIEL M. MCDERMOTT,	:	
UNITED STATES TRUSTEE,	:	
	:	
MOVANT,	:	
	:	
v.	:	CONTESTED MATTER
	:	
DN REAL ESTATE SERVICES	:	
& ACQUISITIONS, LLC,	:	
	:	
RESPONDENT.	:	

**NOTICE OF HEARING ON UNITED STATES TRUSTEE'S
MOTION TO DISMISS OR CONVERT CASE**

PLEASE TAKE NOTICE that the United States Trustee has filed a motion requesting that the above-referenced case be dismissed or converted.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the United States Trustee's motion in **Courtroom 1202**, United States Courthouse, 75 Ted Turner Drive, S.W., Atlanta, Georgia at **2:00 p.m. on April 30, 2018**.

Your rights may be affected by the court's ruling on this motion. You should read this motion carefully and discuss it with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in this motion or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the motion with

the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is: Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, SW, Atlanta, GA 30303. You must also mail a copy of your response to the undersigned at the address stated below.

Dated: March 23, 2018

DANIEL M. MCDERMOTT
UNITED STATES TRUSTEE
REGION 21

By: _____/s/
Lindsay P. S. Kolba
Georgia Bar No. 541621
United States Department of Justice
Office of the United States Trustee
362 Richard Russell Building
75 Ted Turner Drive SW
Atlanta, Georgia 30303
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& ACQUISITIONS, LLC,	:	
	:	
RESPONDENT.	:	

UNITED STATES TRUSTEE'S MOTION TO DISMISS OR CONVERT CASE

COMES NOW Daniel M. McDermott, United States Trustee for Region 21, in furtherance of his administrative responsibilities imposed pursuant to 28 U.S.C. § 586(a) and 11 U.S.C. § 1112(b), files this Motion to Dismiss or Convert Case and in support therefor states as follows:

1. The Court has jurisdiction of this matter under 28 U.S.C. §1334(a) and (b), 28 U.S.C. §157(a) and (b)(1). This is a core proceeding under 28 U.S.C. §157(b)(2)(A) and (B).
2. DN Real Estate Services & Acquisitions, LLC (the “Debtor”) filed a voluntary petition under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101 et seq., March 28, 2017.
3. Pursuant to 28 U.S.C. § 586(a)(3) and (4), the United States Trustee’s duties include supervising the administration of chapter 11 cases and monitoring deposits or investments under

section 345 of title 11. The United States Trustee files this request in furtherance of his duties and responsibilities pursuant to 28 U.S.C. § 586 and 11 U.S.C. § 307.

4. 11 U.S.C. § 1112(b), in pertinent part, provides as follows:

[T]he court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause. . . .

(4) For purposes of this subsection, the term “cause” includes –

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter; . . .

(K) failure to pay any fees or charges required under chapter 123 of title 28; . . .

5. Bankruptcy Rule 2015 and Operating Guidelines of the United States Trustee require Debtor to file monthly operating reports. In its operating reports, Debtor is required to report all disbursements made by Debtor or made on Debtor’s behalf.

6. During the pendency of this case, and in the ordinary course of Debtor’s business, Debtor has sold several parcels of real property. At the closing of each sale, monies were distributed to various secured creditors and taxing authorities on Debtor’s behalf.

7. Debtor has failed to properly account for monies distributed on Debtor’s behalf in the operating reports filed with the Court.

8. The United States Trustee has made several requests that Debtor file amended monthly operating reports for each month in which Debtors closed a real estate transaction to properly disclose the disbursements made on Debtor’s behalf.

9. Debtor’s failure to timely file accurate monthly operating reports is in violation of its statutory obligations under 11 U.S.C. § 704(a)(8), made applicable to it as debtor in possession

by 11 U.S.C. § 1107, and constitutes cause for dismissal or conversion of the case under 11 U.S.C. § 1112(b)(4)(F).

10. Operating Guidelines of the United States Trustee require Debtor to remain current on all administrative expenses including fees due the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6). The United States Trustee is unable to calculate the total amount of fees due the United States Trustee due to Debtor's failure to file accurate monthly operating reports.

11. Upon information and belief, Debtor has outstanding fees due the United States Trustee.

12. Debtor's failure to timely pay fees due the United States Trustee constitutes cause for dismissal or conversion of the case under 11 U.S.C. § 1112(b)(4)(K).

WHEREFORE, the United States Trustee prays for (i) the entry of an order dismissing or converting this case in its entirety; and (ii) such further relief as the court deems appropriate.

Dated: March 23, 2018

DANIEL M. MCDERMOTT
UNITED STATES TRUSTEE
REGION 21

By: _____/s/
Lindsay P. S. Kolba
Georgia Bar No. 541621
United States Department of Justice
Office of the United States Trustee
362 Richard Russell Building
75 Ted Turner Drive, SW
Atlanta, Georgia 30303
(404) 331-4437
lindsay.p.kolba@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2018, I caused a true and correct copy of the United States Trustee's Motion to Dismiss or Convert Case and notice of hearing thereon to be sent by First Class United States Mail to the following parties in interest:

DN Real Estate Services & Acquisitions, LLC
2020 Howell Mill Rd
Suite D - 199
Atlanta, GA 30318

Howard P. Slomka
Slipakoff & Slomka, PC
Overlook III - Suite 1700
2859 Paces Ferry Rd, SE
Atlanta, GA 30339

_____/s/
Lindsay P. S. Kolba
Trial Attorney